edge of the tarred road. He also saw car No. P 9027 moving away towards the town.

PW2 gave evidence that when he was at home he heard a sound "Pomp" like that of impact made by a car. He went out to see and saw a child lying on the side of the road. There was a car driven by defendant No. 1. He pulled the child out a little from underneath the car and then PW1 arrived.

PW3, the Police Corporal, visited the scene. He saw some red marks like blood on the road. He did not find any brake marks.

There are two issues to be decided—

(i) Was defendant No. 1 negligent and

(ii) Was defendant No. 1 agent or servant of defendant No. 2.

With regard to the first issue, counsel for defendant No. 1 alleged that there was contributory negligence on the part of the deceased in running across the road. It happened so suddenly that defendant No. 1 was taken aback and forgot to apply his brakes. He did, however, sound the horn and swerved to the right to avoid the child and in doing so collided with the child. Mr. Wong further submitted that if the plea of contributory negligence was not accepted both defendant No. 1 and the deceased should be considered equally at fault.

Counsel for the plaintiff in his submission stated that the negligence was solely on the part of the 1st defendant. He pleaded guilty in the Magistrate's Court for negligent driving and was convicted and sentenced. He admitted in his evidence that he did not apply the brakes and stated that if he had done so he would not have knocked against the child. He swerved the car to the right and in so doing hit the child on the right side of the road.

On this issue, to my mind, the passage in *Halsbury's* Laws of England, (3rd edition), Volume 28, page 31, para 27, is relevant. It reads as follows :—

" Where the plaintiff's act does not follow the defendant's negligence but is synchronous with it, the defendant will usually be liable. The same is true if the acts, though not strictly synchronous, are closely together and the second is so mixed up with the state of things brought about by the first that the first is part of the cause of the injury. In such cases the question is not who had the last opportunity of avoiding the mischief, but whose act or acts caused the wrong. Thus a negligent driver is not relieved of liability where he injures a passenger who was travelling in a dangerous position on the defendant's or on another person's vehicle. The defendant will ordinarily be responsible where he has been subsequently and severally negligent even though the earlier negligence of the plaintiff created the static position upon which the accident supervened."

Bearing in mind the principle stated above, it would appear from the evidence that it was the act of defendant No. 1 which actually caused the accident and although the deceased was to a certain degree also at fault, defendant No. 1 is, in my opinion, liable.

With regard to the second issue, counsel for the plaintiff referred to the case of *Tan Kwee Low* v. *Lee Chong & Anor.*[1] in which it was stated that the evidential presumption was that the driver of a car was, in default of evidence, the servant or agent of the owner. Here it is admitted that defendant No. 2 is the owner of the said car. In his evidence he denied giving defendant No. 1 permission to use his car. In fact he did not even know defendant No. 1, and he was not even called as a witness at the death enquiry. He had left his car in the workshop for overhaul and when he went and fetched it back, no one there mentioned to him about the accident.

DW4, the foreman, also denied allowing defendant No. 1 to use the car although defendant No. 1 stated that he drove the car with DW4's permission. He also was not a witness at the enquiry.

Defendant No. 2 appeared to me to be a witness of truth and on the facts defendant No. 1 could not be the servant or agent of defendant No. 2. There was therefore no reason why he should be made responsible for the wrongful act of defendant No. 1.

The plaintiff claims $20,000 damages which I consider grossly excessive. In my opinion the assessment should be based on the principle as laid down in *Benham* v. *Gambling*[2]. I allow $150 for special damages including funeral expenses. The deceased was a normal, healthy child and had it not been for her early death she would, in my opinion, have led a life with some measure of happiness. I assess general damages at $2,000 total $2,150. As the deceased herself had to a certain degree contributed to her own death an amount, which I assess at $400 should be deducted from the sum of $2,150 leaving a balance of $1,750. I therefore give judgment for the plaintiff for the sum of $1,750 with costs to be paid by defendant No. 1. The claim against defendant No. 2 is dismissed with costs to be paid by the plaintiff.

Order accordingly.

Solicitors *Pillai, Lim, Lee & Hwang; Wong Sheng Chan; Huck Aik & Cheng Hock.*

YEO LIAN HWA & ANOR. v. THE HOCK LEE AMALGAMATED BUS CO., LTD.

[O.C.J. (Ambrose J.) November 18, 1960]

[Singapore — Suit No. 327 of 1959]

Road accident — Negligence — Contributory Negligence and Personal Injuries Ordinance, (Cap. 25), s.3 — Duty of care — Reasonable foreseeability.

A bus approached a bus stop slowing down to a speed of 5 miles per hour, travelling about 3 feet from the near-side of the road, and giving the impression that it was going to stop behind a stationary bus. There were several persons waiting near the rear of the stationary bus. A person rushed from behind the stationary bus towards the near-side of the approaching bus with the intention of boarding it. He was near the door of the bus, which was at the middle of its near-side, when the driver of the bus, which was then 18 feet

behind the stationary bus, suddenly pulled out, accelerating at the same time to a speed of 9 miles per hour. The intending passenger boarded the bus while it was in motion. He succeeded in grasping the hand-rail and also stepping on to the lower step, when the front near-side corner of the bus was about 14 feet from the rear off-side corner of the stationary bus. The driver of the bus in passing the stationary bus allowed only a clearance of one foot. The passenger was jammed between the two buses and died as a result of the injuries received.

Held: (1) the driver of the bus owed a duty of care to the deceased, as it was reasonably foreseeable that persons waiting at the bus stop to board his bus would be likely to board it while it was moving slowly at the bus stop, and that his acts or omissions would be likely to cause injury to such persons as might attempt to board the bus while it was so moving: *Hay or Bourhill* v. *Young* (2) applied;

(2) the driver was not entitled to assume that such persons would not foolishly attempt to board the bus while it was so moving: *London Passenger Transport Board* v. *Upson* (3) applied;

(3) the driver failed to take reasonable care in that (i) he failed to keep a proper look-out just before he swerved to pass the stationary bus, (ii) he accelerated as he attempted to pass it, and (iii) he failed to allow proper clearance in passing it;

(4) the bus conductor owed a duty of care to the deceased, as it was reasonably foreseeable that persons waiting at the bus stop would be likely to board the bus while it was moving slowly at the bus stop, and that his acts or omissions would be likely to cause injury to such persons as might attempt to board the bus while it was so moving;

(5) the bus conductor failed to take reasonable care in that he failed to place himself at the door, where he would have been able to observe the deceased as he attempted to board the bus and either give the driver the signal to stop or tell the deceased that the bus was full;

(6) the deceased was guilty of contributory negligence as in attempting to board a bus while it was in motion he showed a lack of reasonable care for his own safety;

(7) the driver was to bear three-fifths of the blame for the accident, the conductor one-fifth, and the deceased one-fifth.

[**Editorial Note:** The defendants appealed against the judgment. On March 22, 1961, the Court of Appeal, by consent, reduced the damages awarded to the plaintiffs from $31,200 to $22,500.]

Cases referred to:—

(1) *Stapley* v. *Gypsum Mines, Ltd.*, [1953] A.C. 663.

(2) *Hay or Bourhill* v. *Young*, [1942] 2 All E.R. 396, 403.

(3) *London Passenger Transport Board* v. *Upson*, [1949] 1 All E.R. 60, 70, 72.

(4) *Nance* v. *British Columbia Electric Railway*, [1951] 2 All E.R. 448.

ACTION FOR DAMAGES.

Denis Murphy for the plaintiffs.

N. A. Mallal and *Y. R. Jumabhoy* for the defendants.

Ambrose J.: This was an action for negligence brought against a bus company by the legal personal representatives of a person who was killed in a road accident. They claimed damages in respect of his death for the benefit of his estate and his widow, daughter, son, and parents. The averments in the statement of claim were these: on the 11th April, 1958, while the deceased was boarding defendants' bus No. SH. 485 at or near a bus stop in Alexandra Road in Singapore, the bus drove off, causing him to be hit by a stationary bus; he died as a result of the accident; it was caused solely by the negligent driving of the driver and the negligent conduct of the conductor of bus SH. 485; and they were the defendants' servants or agents. The allegations in the defence were these: the deceased attempted to board the bus while it was moving, full of passengers, and slowly overtaking a stationary bus; there was an accident which resulted in his death; but the accident was caused solely by his negligence and was in no way contributed to by the defendants' driver or conductor.

The first problem to be solved was: how exactly did the deceased come to be fatally injured?

[The learned Judge after considering the evidence and stating the findings of fact which are summarised above in the head-note continued:]

It is desirable to define the tort of negligence before passing on to the second problem. This tort is the breach of a legal duty to take care, which is either the sole cause or a contributory cause of damage to a person to whom the duty is owed. It is not necessary that the breach of duty should be the sole cause of damage: it is sufficient if it is a contributory cause. That is clearly the effect of the view of Lord Oaksey, Lord Reid and Lord Tucker in *Stapley* v. *Gypsum Mines, Ltd.*(1). Section 3 of the Contributory Negligence and Personal Injuries Ordinance, which came into effect in 1954, would have no application unless the possibility that an accident may result from two, three or more causes is recognized.

The second problem to be decided was whether Ho Kok Wah, the driver of bus SH. 485, was guilty of the tort of negligence. This problem posed three questions. The first was this: did the bus driver owe a duty of care to the deceased? This was a question of law. As was pointed out by Lord Macmillan in *Hay or Bourhill* v. *Young* (2) at p. 403:

> "The duty to take care is the duty to avoid doing or omitting to do anything the doing or omitting to do which may have as its reasonable and probable consequence injury to others, and the duty is owed to those to whom injury may reasonably and probably be anticipated if the duty is not observed."

Whether the bus driver owed a duty of care to the deceased in the circumstances in which the bus driver was placed depended on whether it was reasonably foreseeable that his acts or omissions would be likely to cause injury to persons in the deceased's position, that is, persons who might be waiting at the bus stop to board the bus driven by the bus driver. This, too, was a question of law. In my judgment, it was reasonably foreseeable that persons waiting at the bus stop to board his bus would be likely to do something foolish which experience shows

to be common, such as boarding a bus while it is moving slowly at a bus stop; and that his acts or omissions would be likely to cause injury to such persons as might attempt to board the bus. In my opinion, he ought to have foreseen what was reasonably foreseeable. He was not entitled to assume that persons waiting at the bus stop to board a bus would exercise reasonable care. This view is based on the case of *London Passenger Transport Board v. Upson*[3]; where the House of Lords expressly dissented from the ruling of Lord Greene, M.R., in the Court of Appeal that "drivers are entitled to drive on the assumption that other users of the road, whether drivers or pedestrians, will behave with reasonable care." Lord Uthwatt said (at page 70):

> "A driver is not, of course, bound to anticipate folly in all its forms, but he is not, in my opinion, entitled to put out of consideration the teachings of experience as to the form those follies commonly take."

Lord du Parcq expressed the same opinion in these words (at page 72):

> "A prudent man will guard against the possible negligence of others, when experience shows such negligence to be common.
>
> .....
>
> A driver is never entitled to assume that people will not do what his experience and common sense teach him that they are, in fact, likely to do."

Lord Wright agreed with Lord du Parcq's opinion. I held, therefore, that the driver of bus SH. 485 owed a duty of care to the deceased as he was one of the persons waiting at the bus stop to board the bus in question.

The next question posed by the second problem was this: was the bus driver guilty of a breach of the duty to take care, which he owed to the deceased, by failing to attain the standard of care prescribed by law? The standard of care prescribed by law is that of a reasonable man. The test of reasonable foreseeability of damage determines the standard of care required. Whether that standard was attained was a question of fact. It seemed to me that the bus driver failed to take reasonable care in three ways.

In the first place, he failed to keep a proper look-out just before he swerved to pass bus SC. 9698. According to Lim Chin Heng, the swerving of the bus took place when a figure, which he had seen coming from the left from behind the stationary bus and rushing towards bus SH. 485, was near the door of the bus. The bus driver said that, just before he swerved to the right, his bus was about 18 feet behind the stationary bus and 3 feet from the near-side of the road; that there were people at the rear of the stationary bus waiting to board buses; and that he would have stopped if he had seen any person coming towards his bus. It seemed to me more probable than not that the deceased rushed from among the people at the rear of the stationary bus; that, if the bus driver had kept a proper look-out, he would have seen the deceased as he rushed towards the door of his bus; and that, if he had seen the deceased doing so, he could have stopped the bus in time. In my judgment, it was his duty to keep a proper look-out as a reasonable precaution against the reasonably foreseeable possibility that persons might attempt to board the bus while it was in motion; particularly, as, by slowing down to a speed only slightly faster than a walking pace and travelling about 3 feet from the near-side of the road, he might have led persons who were waiting to board the bus to believe that the bus was going to stop behind the stationary bus.

In the second place, the bus driver failed to take reasonable care by driving at an excessive speed when he swerved to pass the stationary bus at the bus stop. Lim Chin Heng said that the bus driver not only swerved but also accelerated; and that he felt a sway to the left which, in his opinion, would have been felt even more by a passenger standing on the step at the door. In my judgment, it was the duty of the bus driver not to accelerate, while swerving so abruptly to pass a stationary bus at a bus stop, as a reasonable precaution against the reasonably foreseeable possibility that persons might attempt to board the bus while it was in motion, particularly as he might have given the impression that the bus was going to stop. To accelerate in such circumstances was to increase the risk of injury to any person who might be foolish enough to make the attempt. The fact that he thought his bus was full was no justification for the sudden acceleration. He admitted that whether the bus was full or not, he had to stop if requested, and stated that whether passengers were allowed to board the bus was for the conductor to decide.

In the third place, the bus driver failed to take reasonable care by passing the stationary bus without allowing proper clearance while doing so. The road was divided by a road divider. His side of the road was 20 feet wide. The stationary bus was 26½ feet long and 7½ feet wide. Its rear was 1½ feet, and its front 2½ feet, from the near-side of the road. His bus was 28 feet long and 7 feet wide. In my judgment, it was his duty to allow a clearance of about 3 feet in passing the stationary bus as a reasonable precaution against the reasonably foreseeable possibility that persons might attempt to board the bus, without his knowledge, while it was moving at a bus stop. As the clearance allowed by him did not exceed 1 foot, he plainly failed to take reasonable care.

The last question posed by the second problem was whether the breach of duty to take care was the sole cause or a contributory cause of the fatal injuries suffered by the deceased. This was a question of fact to be decided by common sense. In my judgment, the bus driver's conduct was not the sole cause of the fatal injuries: but it was a contributory cause.

The third problem which called for consideration was whether the conductor of bus SH.

485 was negligent. This problem raised three questions. The first was whether he owed a duty of care to the deceased. I thought that it was reasonably foreseeable that his acts or omissions would be likely to cause injury to persons who might be waiting at the bus stop to board the bus of which he was the conductor. It was reasonably foreseeable that such persons would be likely to attempt to board the bus while it was moving slowly at the bus stop. In my opinion, he ought to have foreseen that, if any persons made the attempt, and if he did not either signal to the driver to stop or tell them that the bus was full, his failure to do so would be likely to cause injury to them. I accordingly held that the bus conductor owed a duty of care to the deceased. The next question was whether he was guilty of a breach of the duty to take reasonable care. In my judgment, he was, for this reason: as the bus was approaching the S.C.S. bus stop, he failed to place himself at the door, where he would have been able to observe persons attempting to board the bus and either give the driver the signal to stop or tell them that the bus was full. In cross-examination, he gave the following evidence: as the bus approached the S.C.S. bus stop, it slowed down to a speed slightly faster than a walking pace; he did not think that it was going to stop; if people at the bus stop thought so, that was a matter for the driver; he did not know whether any persons wanted to board the bus; normally, he would be at the door to look after passengers boarding or alighting; on this particular occasion, he was punching tickets about 7 feet from the back of the bus; no persons indicated to him that they wanted to board the bus; the bus did not stop at the bus stop before the accident, because it was full and there were no passengers alighting. It seemed to me that his own evidence showed that he was completely indifferent to his duty. If he had been at the door, he would have been able to see that the deceased wished to board the bus, and he would have been able to stop the bus in time or tell the deceased that the bus was full. The last question was whether the bus conductor's breach of duty to take care was a contributory cause of the fatal injuries suffered by the deceased. I held that it was.

The next problem which confronted me was this: was the deceased guilty of contributory negligence? This was no problem at all. In my view, the deceased by attempting to board a bus while it was in motion showed a lack of reasonable care for his own safety: it was not necessary to show that his conduct amounted to the breach of a duty which he owed to the bus driver or the bus conductor: the authority for this view is *Nance* v. *British Columbia Electric Railway*[4]. I, therefore, held that he was guilty of contributory negligence.

My next task was the apportionment of blame for the fatal injuries suffered by the deceased. In my opinion, to attempt to board a bus, while it is slowing down at a bus stop to a speed of about 5 miles per hour as though it is going to stop, and to jump into it when it suddenly accelerates is conduct to which only a slight degree of blame can be attached. It is to be borne in mind here that Lim Chin Heng, who was himself a bus conductor employed by the defendants, made a successful attempt to board the same bus while it was in motion on the day in question after it had left the Dawson Road bus stop and shortly before the deceased made his attempt. The main reason why the deceased failed to board the bus safely was that there was a stationary bus in front of the bus which he attempted to board and that the bus driver did not allow a sufficient clearance as he passed it. It seemed to me that the amount of blame to be attributed to the bus conductor for failing to be at the door of the bus as it approached the bus stop to attend to persons wishing to board the bus was at least as much as that attached to the deceased. In my judgment, the highest degree of blame had to be imputed to the bus driver. I thought it highly probable that, the accident would not have happened if the bus driver had kept a proper look-out; or failing that, if he had refrained from accelerating while pulling out; or failing that, if he had allowed a sufficient clearance while passing the stationary bus. Having regard to these considerations, I came to the conclusion that he was at least thrice as blameworthy as the deceased. I, therefore, apportioned three-fifths of the blame to the driver, one-fifth to the conductor and one-fifth to the deceased. I should add here that, if I had held that the bus conductor was not guilty of the tort of negligence, I would have apportioned four-fifths of the blame to the driver.

The last task which had to be tackled was the assessment of damages. I allowed special damages which consisted of one item, namely, funeral expenses, at the agreed figure of $700. I fixed the amount of damages for loss of expectation of life at $3,000, the deceased being 30 years old at the time of his death. As regards general damages, I took into consideration the following facts. At the date of his death, the deceased was employed at the Queenstown Technical School as a clerk on a basic salary of $310 per mensem. He also received a variable allowance of $93 per mensem, which would have been reduced to $32.50 as from the 1st July, 1959. In addition, he earned $190 per mensem on an average as a part-time teacher. He had two other part-time jobs which brought him an additional average monthly income of $170: I disregarded this as it seemed to me probable that it might cease at any time. He gave his wife $400 every month for the support of his family, which included a daughter and a son, who, at the time of his death, were 4 years and 2 years old, respectively: out of this sum, $50 was spent on the deceased. I estimated that the deceased's expectation of working life was

25 years. I took into account the likelihood of increased earnings. He was on a salary scale of $152 to $475 per mensem and was expected to reach the maximum on 1st February, 1969. There was, in my opinion, a reasonable probability that if the deceased had not died, he would have been promoted to the Executive Grade, the salary scale of which is $225 to $655 per mensem. I took into consideration the fact that the deceased was a healthy man in the prime of life. Making due allowance for all contingencies, including the contingency that the widow, who was 32 years old at the date of the trial, might remarry, I fixed the basic figure of the deceased's net contribution to his household at $300 per mensem and the number of years' purchase at 15 and allowed $37,020 as compensation for the widow, daughter, and son. The deceased gave his father and mother $50 each per mensem for their expenses. Considering that his variable allowance would have been reduced about 14 months after his death and that the earnings from the two part-time jobs other than the teaching job would probably have ceased about the same time and the fact that his father was 60 years old and his mother 54, I awarded his parents as compensation a sum of $1,000 each. The total amount of damages came to $42,720. From this I deducted a gratuity of $3,720 which was a financial benefit arising out of the death of the deceased. That left a balance of $39,000. As the deceased's share in the responsibility for the damage suffered by him was one-fifth, I reduced the damages recoverable by one-fifth, i.e. $7,800, leaving a sum of $31,200. I gave judgment for the plaintiffs for this sum, apportioning it between the deceased's estate and the various dependants, and costs.

Order accordingly.

Solicitors: *Murphy & Dunbar; Mallal & Namazie.*

LOO GEOK HONG v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Hill J.A., and Hepworth J.) November 21, 1960]

[Penang — F.M. Criminal Appeal No. 18 of 1960]

Criminal Law — Murder — Direction to jury — Accident — Provocation — Self-defence — Penal Code, s.302.

The appellant was convicted for the murder of his wife. His defence then was that the stabbing was accidental and that he was entitled to have the charge reduced to manslaughter because either he was acting in self-defence and went beyond what was permissible or that he was deprived of his power of self-control by grave and sudden provocation. The jury brought in a unanimous verdict of guilty. On appeal it was contended that the summing-up of the learned trial Judge was defective because he did not put to the jury the possible available defence as provided by exception 4 of section 300 of the Penal Code and that the summing-up might have led the jury to take a wrong view of the law.

Held: (1) although a Judge sitting with a jury should put to the jury any defence available on the evidence irrespective of whether or not reliance has been placed on it at the trial, the way in which it is to be complied with is a matter for the trial Judge to decide in view of the actual evidence with which he is concerned;

(2) as the facts were put to the jury and they were given a direction that if they thought there might reasonably be something in the defence view of them they should reduce the charge and convict for manslaughter, the question of what labels were attached to that particular set of facts is irrelevant;

(3) taken as a whole there was nothing in the summing-up inconsistent with the law as stated by the Privy Council in *Attorney-General for Ceylon* v. *Perera*.(1)

Case referred to:

(1) *Attorney-General for Ceylon* v. *Perera* [1953] A.C. 200; [1953] 2 W.L.R. 238.

COURT OF APPEAL (CRIMINAL).

S. P. Seenivasagam for the appellant.

Abdul Hamid bin Omar (Deputy Public Prosecutor) for the respondent.

Thomson C.J. (delivering oral judgment): This appellant was convicted at the Penang Assizes by Mr. Justice Rigby and a jury for murder in contravention of section 302 of the Penal Code.

The charge against him was that on 22nd July, 1960, at a premises in Ayer Itam he murdered his wife Yeap Luan Eng.

Up to a point the facts were not in controversy.

There was considerable disparity in age between the parties and latterly there was a history of conjugal unhappiness apparently resulting from the appellant's non-success in business and consequent straitened circumstances.

On the day in question there was some sort of unpleasantness between the parties in the presence of strangers at or near a coffee-shop in Ayer Itam and later in the evening the appellant and his wife retired to the conjugal bedroom where shortly afterwards, and there is no question about this, the appellant killed her by inserting a large knife three times into vital parts of her person.

As the trial Judge had pointed out in his summing-up, only two people knew what happened in that bedroom. One of them was not available as a witness at the trial. I refer, of course, to the dead woman. The other was the appellant and at the trial he gave his account of what happened. If that account was true it made out either that he was innocent because the stabbing was accidental (although I must point out that that involves the hypothesis not of one accident but of three accidents) or that he was entitled to have the charge against him reduced to manslaughter because either he was acting in self-defence and went beyond what was permissible or he was deprived of his power of self-control by grave and sudden provocation.

All that was put to the jury at very great length in the summing-up which counsel for the appellant has conceded was at little pains to